

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of)

Martin Hoffman, Trustee-in-Bankruptcy)
for Astroline Communications Company)
Limited Partnership)

MM DOCKET NO. 97-128

File No. BRCT-881201LG

For Renewal of License of)
Station WHCT-TV, Hartford, Connecticut)

RECEIVED

and)

JUN 23 1999

Shurberg Broadcasting of Hartford)

FEDERAL COMMUNICATIONS COMMISSION
File No. BPCT-83 DEPOSE THE SECRETARY

For Construction Permit for a New)
Television Station to Operate on)
Channel 18, Hartford, Connecticut)

To: The Commission

SEPARATE STATEMENT OF RICHARD P. RAMIREZ IN REPLY TO SHURBERG EXCEPTIONS

Richard P. Ramirez ("Ramirez"), by his attorney, hereby submits a Separate Statement concerning the "Consolidated Exceptions and Brief of Shurberg Broadcasting of Hartford" ("Shurberg").^{1/}

1. Shurberg's continued prosecution of his own flawed application^{2/} and his fifteen

^{1/} Ramirez has also submitted a Joint Reply to Exceptions along with the Trustee in Bankruptcy and Two If By Sea Broadcasting Corporation ("TIBS") which is being filed simultaneously herewith.

^{2/} On July 1, 1998, the Trustee in Bankruptcy and Two If By Sea Broadcasting

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year attack on Astroline Communications Company Limited Partnership (“ACCLP”) constitutes one of the most egregious abuses of Commission processes that has ever occurred and a sad assault upon the Commission’s efforts to promote minority ownership through the minority distress sale policy.

2. At the outset, the instant proceeding should never have been designated for hearing. Designation occurred because Shurberg willfully and knowingly failed to bring to the Commission’s attention the fact that after a lengthy proceeding, the Connecticut Bankruptcy Court ruled that Ramirez, ACCLP’s managing general partner, and an Hispanic American, had control of ACCLP and that ACCLP complied with the Uniform Limited Partnership Act. Shurberg’s Exceptions completely ignore the Bankruptcy Court proceeding which was affirmed on appeal by the District Court and the Second Circuit Court of Appeals.

3. Once this proceeding was designated, albeit mistakenly, Shurberg had full discovery and the opportunity to depose numerous individuals. He did not even bother to depose the limited partners of ACCLP who had testified fully in the bankruptcy court proceeding. He did not even bother to depose Ramirez. Shurberg did depose nearly every attorney at Baker & Hostetler who had worked on the ACCLP account.

4. Despite the fact that Shurberg had the burden of proceeding, he did not produce one witness! Instead, Shurberg relied on a few isolated documents of the many hundreds of documents that had been introduced in the bankruptcy proceeding. On the other hand, the

²(...continued)

Corporation filed a “Further Petition to Dismiss or Deny Application of Shurberg Broadcasting of Hartford and Request for Expedited Action by the Full Commission.” That petition is still pending.

Trustee, TIBS and Ramirez produced a number of witnesses who fully responded to Shurberg's spurious allegations. These included Ramirez, FCC attorney Thomas Hart, the Trustee-in-Bankruptcy, Martin Hoffman, accountant Kent Davenport and Boston corporate attorney Carter Bacon.

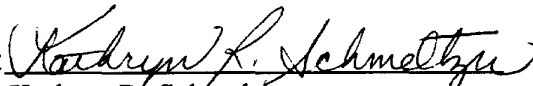
5. In sum, Shurberg has no case, and his attempts to muddle and confuse the simple misrepresentation issue that was designated must be soundly rejected. Shurberg's arguments have already been fully addressed in the Joint Proposed Findings of Fact and Conclusions of Law and Joint Reply Findings filed by the Trustee, Ramirez and TIBS. Copies of the summaries of those pleadings are attached hereto for the convenience of the Commission. Shurberg would have the Commission deny the Trustee's renewal on the basis of inapposite cases and policies that came into effect after ACCLP's application was granted and had been consummated. There is no basis for faulting ACCLP. Ramirez and ACCLP in good faith attempted to bring a minority television station to Hartford, Connecticut and the record reflects ample evidence of the company's good intentions. Ramirez is a bona fide Hispanic American with a lengthy record of broadcast experience. As the record amply demonstrates, neither Ramirez nor anyone else involved with ACCLP ever had any intent to deceive the Commission, the *sine qua non* of misrepresentation. Thus, the Administrative Law Judge was correct in favorably resolving the issue.

6. It was Shurberg who wrecked ACCLP's television station in Hartford by his prolonged appeals which hampered the company's ability to secure the bank financing it had been promised. Shurberg should be sanctioned for his conduct and the Commission has the resources through its forfeiture authority to do that and to dismiss Shurberg's application. **THIS PROCEEDING MUST END!**

In sum, the Commission should expeditiously deny Shurberg's Exceptions, dismiss Shurberg's pending application, grant the Trustee's license renewal and issue a notice of apparent liability for a forfeiture against Shurberg in the maximum amount.

Respectfully submitted,

RICHARD P. RAMIREZ

By: 
Kathryn R. Schmeltzer
His Attorney

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SUMMARY

This proceeding commenced more than 15 years ago and, unfortunately, has not yet concluded. The record reflects that at every turn, Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("Shurberg"), a competing applicant for the facilities of television station WHCT-TV, Hartford, Connecticut, has attempted to thwart those who have received FCC approval to be the licensees of the station, first Astroline Communications Company Limited Partnership and now Martin W. Hoffman, Trustee-in-Bankruptcy.

The hearing in September 1998 was the result of allegations made by Shurberg to the Commission in 1993 -- allegations that were derived from arguments and documents in the Connecticut bankruptcy proceeding involving WHCT-TV. But Shurberg neglected to advise the Commission that the allegations had all been resolved in favor of ACCLP in a decision issued by the Chief Judge of the Bankruptcy Court in October 1995. And, to make matters worse, Shurberg neglected to tell the Commission that the Connecticut District Court and the Second Circuit Court of Appeals both affirmed the Bankruptcy Court decision.

As a result of Shurberg's deliberate omissions, this case was designated for hearing on matters which had already been resolved by the federal courts. Specifically, the federal courts delved deeply into the subjects of who controlled the programming, personnel, and finances of WHCT-TV, considered ACCLP's tax records, and heard the testimony of ACCLP's principals and accountants -- the precise questions raised under Issue (1). The federal courts reached one inalterable finding -- that Richard Ramirez ("Ramirez"), ACCLP's managing general partner and an Hispanic American, had control. The federal court decisions covering the same matters as those set forth in Issue (1) are entitled to full faith and credit. Moreover, as a purported creditor

of the bankrupt estate, Shurberg is collaterally estopped from relitigating the matters resolved by the federal courts.

Aware that the federal court action actually rejected his core contentions, during the hearing Shurberg paid little attention to the allegations that formed the basis for the designated issues. In fact, Shurberg did not even ask those he deposed about the allegations raised in his petition to deny. And the majority of Shurberg's questions of witnesses at the hearing had little to do with the allegations that formed the basis for the issue. For instance, Mr. Hoffman, the Trustee, traveled all the way from Connecticut for five minutes of cross-examination by Shurberg on what constituted the station's licensed assets. Instead, Shurberg has chosen to dwell on extraneous matters -- such as whether a December 31, 1985 amendment to the ACCLP Partnership Agreement was duly filed with the FCC, and whether ACCLP erred by filing a letter reporting its ownership structure on August 3, 1987 in lieu of using an ownership report form.

Shurberg's attempt to litigate this proceeding for another 15 years should be rejected. The record reflects that ACCLP's unique structure was approved by the full Commission; that Ramirez had a 21% ownership interest in ACCLP; that Ramirez was an experienced minority broadcaster who had full control of the day-to-day operation of the partnership and the station at all times; and that Ramirez and ACCLP endeavored to abide by FCC rules and regulations at all times. The record further reflects no evidence of an intent to deceive the Commission -- the *sine qua non* of misrepresentation -- by ACCLP or Ramirez at any time.

The new matters that Shurberg has belatedly proffered do not constitute evidence of misrepresentation. It cannot be definitively determined whether or not the amended agreement dated December 31, 1985 was ever filed with the FCC because the FCC no longer has any

WHCT-TV ownership records from the 1980s. In any event, however, the record shows that the agreement was publicly filed with the Secretary of the State of Massachusetts and was forwarded to Ramirez for the station's Public Inspection file. The agreement was also an exhibit in the bankruptcy court proceeding. Thus, if Shurberg really thought that ACCLP was trying to hide the agreement, he could have raised the matter years earlier. Similarly, if Shurberg felt that the August 3, 1987 ownership letter was inadequate, he could have raised that matter years earlier as well and sought appropriate issues. Like the restated partnership agreement, the August 3, 1987 letter was an exhibit in the bankruptcy proceeding, and there is a stamped receipt copy demonstrating that it was filed with the FCC. The FCC itself never raised any questions concerning the letter or sought additional information.

The record amply demonstrates that there was no misrepresentation on the part of ACCLP. Clearly, there was no intent to deceive. And the record further dictates that Shurberg's attempts to allege new instances of misconduct, long after the fact, must be rejected. Issue (1) should be favorably resolved.

Under designated Issue (2), the public interest, convenience and necessity will be served by grant of the Trustee's renewal application in light of the following: (I) ACCLP made no misrepresentations, (ii) ACCLP did not intend to deceive the Commission, (iii) preserving the station's value as an asset for innocent creditors promotes public policy, (iv) upholding the integrity and reliability of final Commission action is in the public interest, (v) duplicative litigation like that which Shurberg has brought here wastes public and private resources and must be discouraged, and (vi) rewarding Shurberg's concealment of the relevant federal actions regarding

common matters will encourage further concealment and undermine the Commission's need for full candor from its applicants.

In sum, this proceeding should be finally concluded with full exoneration of ACCLP and Ramirez, consistent with the decisions of the federal bankruptcy and appeals court in Connecticut and the decision of the Second Circuit Court of Appeals.

SUMMARY

The legal and factual flaws that permeate the Proposed Findings of Fact and Conclusions of Law tendered by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("Shurberg") reveal a pleading that is not only completely unreliable but also disingenuous. Shurberg has fabricated a fallacious argument premised on distorted facts and misplaced legal theories.

There are a series of fundamental errors in Shurberg's legal analysis which cannot be considered mere mistakes. First, Shurberg's argument assumes that ACCLP had to be converted at some stage to an "insulated" limited partnership. However, ACCLP was not an "insulated" limited partnership when it presented its application to the FCC in 1984, and ACCLP did not have a duty to become an "insulated" limited partnership in 1985 or at any other time. Although ACCLP's limited partnership structure was reviewed and approved by the full Commission in 1984 and conformed to the minority ownership policies and attribution standards in effect at that time, Shurberg insists that the Commission's 1985 reconsideration of its attribution standards mandated that ACCLP modify its structure. Shurberg is wrong.

As demonstrated in this Reply, both the Commission and the Review Board have stated that the changes in the attribution standards were to apply prospectively, and the changes were never applied by the Commission in the context of granted and consummated minority distress sales. It was only in the context of preparing for a comparative license renewal hearing in late 1988 that ACCLP began to consider the issue of insulation. As Richard Ramirez ("Ramirez"), ACCLP's minority general partner, testified at the hearing, ACCLP never doubted that it complied with the minority distress sale policy, and the consideration of insulation in late 1988 in preparation for a comparative hearing had nothing to do with ACCLP's status as a minority

controlled entity. At all times, ACCLP complied with the Revised Uniform Limited Partnership Act ("RULPA") which was the applicable legal standard.

Second, in his zeal to buttress his flawed "insulation" argument, Shurberg erroneously relies on two Commission declaratory rulings on alien ownership. Not only are these rulings inapposite, but the Commission expressly distinguished them from its general attribution standards and from its minority distress sale policies.

Third, Shurberg's Findings are premised on the arguments of Trustee Hoffman as one party to the Connecticut bankruptcy proceeding. Specifically, Shurberg proposes factual findings based on the arguments the Trustee advanced to the Bankruptcy Court in his fiduciary capacity at the behest of Shurberg and creditors seeking to expand the possible sources of funds. But Shurberg totally ignores the decisions of the Bankruptcy Court and the federal courts rejecting those very arguments.

Ironically, Shurberg's allegations of misrepresentation are not only founded on false theories but also are premised on materials that Shurberg has known about for years but never raised in a timely fashion. Shurberg has known of the December 31, 1985 Restated and Amended ACCLP Limited Partnership Agreement and the August 3, 1987 ACCLP ownership filing with the FCC at least since the bankruptcy court proceeding, since both documents were exhibits in that proceeding, if not earlier, since both documents were public records. If Shurberg really believed that these documents contained evidence of misrepresentation, surely he would have brought them to the attention of the Commission previously. Shurberg has not hesitated to file every conceivable pleading to delay the ultimate resolution of the WHCT-TV license. Yet Shurberg did not mention these documents in his petition to deny and related pleadings and the

Hearing Designation Order in this proceeding made no mention of them. As ACCLP has shown in its Proposed Findings, the record evidence demonstrates that there was never any intent to deceive the Commission and no misrepresentation occurred.

In short, Shurberg's "insulation" argument is a "red herring" that is unsupported by either the law or the facts, and his reliance on the Commission's rulings on matters related to alien ownership is misplaced because those rulings have no relevance to the Commission's minority distress sale policies. Moreover, Shurberg's failure to acknowledge the decisions in the Connecticut bankruptcy court proceeding constitutes a substantial defect in his pleading. Shurberg's factual findings are replete with errors. For instance, Shurberg relies on an exhibit he withdrew (Shur. Ex. 35) and mistakenly argues that a pro forma transfer application filed by ACCLP in late 1988 was still pending in July 1989, although Commission records reflect the application was granted on December 22, 1988.

Shurberg has litigated the issue of ACCLP's compliance with the Commission's minority distress sale policy once - in a proceeding that went all the way through the Commission and the courts. Shurberg should not be permitted to engage in his own version of "Ground Hog Day" by litigating the issue over again using increasingly fanciful theories. The designated issues should be resolved in favor of the Trustee, thereby enabling him to vindicate the interests of the innocent creditors in the bankruptcy proceeding

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"SEPARATE STATEMENT OF RICHARD P. RAMIREZ IN REPLY TO SHURBERG EXCEPTIONS"** were sent this 23rd day of June 1999, by first class United States mail, postage prepaid, to the following:

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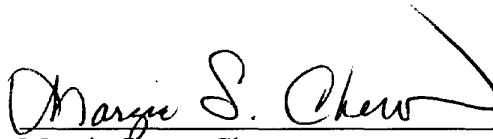
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